US tightening access to information

First of three articles

By Ross Gelbspan
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The Reagan Administration, while denying it is pursuing any formal policy, has moved systematically over the last three years to restrict or cut off access to a wide range of traditionally public information.

The restrictions, unprecedented in peacetime, cover material ranging from unclassified scientific papers to information about the operation of government agencies to the writings of senior officials.

As a result, a growing number of bureaucrats, scientists, historians, journalists, government contractors, unions and public interest groups are running into newly erected barriers to gathering and disseminating information.

The Administration justifies many of its specific actions on national security grounds. It claims that the nation's security depends on stemming leaks of classified information and cutting down on the flow of technological and scientific information to the Soviet Union.

But many people affected by the new restrictions charge the Administration's actions threaten academic freedom, violate constitutional guarantees of free speech and freedom from self-incrimination and create an atmosphere of fear and intimidation among scholars, scientists and bureaucrats.

Some fear that ultimately the Administration's restrictions on information may impair the ability of society to engage in informed, timely debate about critical public policy questions.

Virtually all the restrictions have been accomplished by the executive branch – the White House, the Justice Department, the Pentagon and the National Security Council – without the approval of Congress. They include:

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- Imposing lifetime censorship and the threat of random lie detector tests on about 130,000 bureaucrats and government contractors;
- Rewriting the rules governing classification of documents to permit more information to be kept secret;
- Permitting agencies to avoid scrutiny by obstructing the flow of previously available information under the Freedom of Information Act;
- Attempting, on at least nine occasions, to suppress publication or presentation of unclassified scientific papers;
- Requesting university officials to conduct covert surveillance of foreign visitors and to limit their activities.

No White House or cabinet-level official has responded to charges that the Administration is pursuing a conscious policy of secrecy.

Several members of Congress, in fact, have criticized the Administration for not providing such high-level policy makers as former National Security Adviser William Clark or Attorney General William French Smith to discuss Reagan's information policies.

White House officials, including presidential adviser Edwin Meese III and White House communications director David Gergen, declined repeated requests for interviews on the subject. White House counsel Fred Fielding and National Security Director Robert MacFarlane did not return telephone calls.

Through spokesmen in the Justice Dept. and other agencies, the Administration has generally defended its actions on the ground that it needs to stop leaks of classified information. Defense and intelligence officials also cite a need to clamp down on the flow of militarily valuable technology to the Soviet Union.

The restrictions on the Freedom Of Information Act (FOIA), officials claim, are needed to counter a perception among foreign governments and informants in criminal investigations that the government cannot protect confidential information.

But opponents charge the Administration has produced no evidence that disclosures under FOIA or leaks of sensitive information by bureaucrats have endangered the national security or compromised criminal investigations.

On four occasions, congressmen have scheduled closed meetings with one such official to see evidence of threats to national security being used to justify some of the Administration's actions. To date, the meetings have not taken place – either because of scheduling problems or disputes over ground rules.

"One of the most distressing aspects of these information restrictions is the failure of the Reagan Administration to offer a credible justification for the new policies," said Congressional critic Rep. Glenn English (D-Okla.)

"This whole business of secrecy has become pervasive," observed Dr. Robert Park, professor of physics and an official of the American Physical Society. "This is obsessive. It's the worst I've ever seen in any administration."

Harold Relyea, a specialist in American government for the Library of Congress, said there are historical precedents for some parts of the Reagan Administration's information policy, but not for its overall sweep.

President Harry Truman's guidelines for classification were as broad as Reagan's, Relyea pointed out, although they have been progressively limited by each succeeding president. And during the early Eisenhower years, the Office of Strategic Information monitored unclassified but sensitive technical information, he said in a telephone interview.

"But taken together," Relyea said, "the Reagan policies constitute an unprecedented effort to clamp down on information."

The most dramatic and highly publicized action by the Administration in this area was the issuing last March of National Security Decision Directive (NSDD) 84.

Under the order, about 112,000 bureaucrats and 15,000 government contractors with access to especially sensitive information are now required, for the rest of their lives, to submit any article, book or speech they write to a review board to determine whether the piece contains sensitive information.

Acting assistant attorney general Richard K. Willard said in an interview that he drafted the order to deal with the ongoing problem of leaks of sensitive information which, he said, is a significant source of danger to the national security.

Asked to characterize the scope of the danger, Willard declined to respond, saying that information is itself classified: "It's just as easy for the Soviets to read it in the newspapers, they wouldn't even have to send spies to get it."

But John Shattuck, legislative director of the American Civil Liberties Union, contended that, "The directive amounts to a huge and unprecedented censorship system which is at war with the First Amendment – and for which there is virtually no justification."

Commenting on Willard's refusal to describe the problem that prompted the drafting of the directive, Shattuck added, "It's Orwellian in the extreme when the very justification for something that undermines freedom of speech is protected as secret."

Few leaks recently

Agreeing that there has been no marked increase in the number of sensitive leaks over the past few years, Willard confirmed a finding by the Goverment Accounting Office that there have been only 11 leaks in the past five years serious enough to require administrative action in eight agencies that handle highly classified information. Only two of the leaks would have been covered by NSDD84.

One particularly controversial provision of the order calls for employees who see especially sensitive information to undergo polygraph (lie detector) examinations – both to investigate leaks and on a random, spot-check basis.

Although they have been in use for years, such tests are not accepted as evidence in court. A recent Congressional re-

port found no evidence that polygraph results are valid and concluded that the tests run a risk of mislabelling people as deceptive.

Nevertheless, NSDD84 states that an employee who refuses a polygraph exam may be subject to "adverse consequences." Willard said "adverse consequences" would, in most cases, simply mean denying an employee access to sensitive information.

Asked why the order was necessary when criminal laws already cover leaks of sensitive information, Willard said such cases are difficult to prosecute, since that requires disclosing sensitive information to juries and in public court records.

He denied that an employee's refusal to undergo a lie detector test violates the 5th Amendment to the Constitution, which guarantees the individual's right not to incriminate himself. It does not apply, he said, because an agency investigation is not the same a criminal trial.

Mark Roth, an attorney for the American Federation of Goverment employees, challenged that view. In a telephone interview, he said, "Our concern is that innocent people will have their livelihoods on the line based on admittedly unreliable tests. You can be fired if you don't take the test, and you can be fired if you do. It's our reading that it's not constitutional."

Although Willard emphasized that the order covers only a small fraction of employees with access to a minute portion of all classified information, critics point out that it includes high-level officials in policy-making positions.

Charles William Maynes, a former assistant Secretary of State and editor of Foreign Policy magazine, told a Congressional committee that the delay inherent in the censorship process "effectively grants a standing administration critical control over the course of debate on a large number of key public policy issues. . . Foreign Policy has received 34 percent of its articles from former officials" – many of whom would be subject to such censorship."

Willard conceded that the order could have a small delaying effect, but he insisted that the CIA, which must approve such material, clears all manuscripts – including books – in an average of 13 days.

One scientist who has been involved in nuclear weapons work said the mere existence of the order would probably deter researchers from undertaking vital government-sponsored work.

Park, of the American Physical Society, said he conducted an informal poll of a number of senior physicists, many of whom worked on the original Manhattan Project developing the atomic bomb. "The question was whether the requirement to sign a lifetime pre publication review agreement would have affected their decision to enter government service.

"Without exception, everyone I asked said they would not have entered government service under these conditions," he said in a telephone interview.

Dr. Jonathan Knight of the American Assn. of University Professors, said the censorship threat could be used to harass critics. "If, as Willard claims, there is no need for a vast censorship apparatus, that is proof the order will achieve its aims simply by frightening people," he said.

It is unclear whether the Administration has begun to implement the censorship provision. Willard said nobody has been required to sign Pre-Publication Review agreements. Two senators, Charles Mathias (R-Md) and Thomas Eagleton (D-Mo.), won passage of a bill last fall putting that provision of the directive on hold until mid-April, when hearings on its implications are planned. "It would be against the law for us to require it be signed in view of the Senate's action," Willard said.

But a scientist at a major East Coast defense planning institute said two weeks ago that most people at his institution have already been pressured to sign the pre-publi-cation review provision.

"We were given to understand that we had to sign it or our security clearances would be in jeopardy," he said, requesting that neither his identity nor his employer be identified.

Stressing that he has never been required to sign such agreements in the past, the scientist said, "It's an intimidating order. I'm leery about talking to you right now, even though I'm not telling you anything that's classified – just my opinions."

Broader classification rules

In addition to clamping down on those with access to highly classified material, the Administration has also moved to broaden classification rules so that more information can be stamped secret.

That Executive Order, issued by the President in 1982, reversed a 30-year trend in classification rules which had progressively limited the scope of government-imposed secrecy. Specifically, the order:

- Eliminated a provision barring an agency from classifying information unless it could show that "identifiable harm" to national security would result from its disclosure.
- Dropped a guideline requiring that the danger of disclosure be balanced against the public's right to know.
- Made it easier for agencies to classify previously public material as secret after receiving a Freedom of Information request for the material.
- Allowed agencies to reclassify information that had previously been declassified. Already several authors have been told they cannot use information they gathered from open sources.
- Eliminated a timetable intended to

became public (after 6, 20 or 30 years, d
pending on the material) when it was
longer sensitive. The new guideline allo
agencies to keep information classified "
long as required by national security co
siderations."

A number of historians researching
history in the early 1950s claim their wo
is being hampered because informatic
which would have become public und
the previous time schedule is now secret.

In an interview, Steven Garfinkel, d
rector of the Information Security Ove
sight Office responsible for overseeing a
classification of documents in the gover
ment, strongly defended the changes. H
said the "identifiable harm" and balan
ing provisions were dropped on the groun
that they were frequently the focus of lit
gation to force disclosure of information
a focus, he contends, was not intended b
drafters of previous classification orders.

Conceding that the classification pr
cess may be vulnerable to abuse in som
areas, Garfinkel maintained that critic
are "reacting to words, not deeds." Ther
has been, he insisted, "no change in th
flow of information from the last adminis
tration to the current one."

A report being prepared for the Presi
dent will show that the total amount o
classification activity is up by a minima
four percent, he said. "Given the world sit
uation last year," he said, "that's a pretty
good batting average."

Justification challenged

To critics, a fundamental objection re
mains that the Reagan Administration
has failed to produce any evidence to justi
fy a whole range of measures restricting
the public's access to information.

Testifying before Congress last October
former Undersecretary of State George W.
Ball said: "The directive [NSDD84] can be
justified only if its proponents produce
compelling evidence that such an abridge
ment of free discourse is absolutely essen
tial. They have not met that burden of
proof; I see no evidence they have even
tried to do so.

"Our current obsession with the Soviet
Union," Ball warned ominously, "should
not lead us to imitate the very Soviet meth
ods and attitudes our leaders. . .deplore."

Next: Suppressing scientific papers